which is unlawful if not conducted under the provisions, restrictions and requirements of the law," and proceeded to discuss license and registry together, as requirements of the law which should be strictly complied with, to give the transaction validity. To hold otherwise, restricts the principle of Levinson v. Boas to the single situation there presented, viz.: that in which the pawnbroker is doing business without a license.[16]

C. A. R.

PUBLIC UTILITIES: VALUATION OF PROPERTIES BY RAILROAD COMMISSION FOR PURPOSES .OF CONDEMNATION: SCOPE OF JUDICIAL REVIEW.—In *Marin Water and Power Company v. Railroad Commission of the State of California*,[1] a proceeding in certiorari[2] was instituted for the purpose of reviewing a decision of the Railroad Commission[3] fixing the compensation to be paid by the Marin Municipal Water District for the lands, property and rights of the water company. The Supreme Court of California held that in making this determination the Commission exercised judicial power, and hence the court had jurisdiction in certiorari to inquire whether the Commission had exceeded its authority, even without the express grant of such jurisdiction in the Act itself. It was ruled that when a finding or conclusion of fact is based upon uncontradicted evidence, its accuracy usually becomes a mere question of law, and may be reviewed if it goes to the jurisdiction. However, the court avoided a determination of the jurisdictional character of the petitioner's objections, finding them insufficient when considered upon their merits.

Section 47 of the California Public Utilities Act under which the Commission proceeds in valuing the properties of public utilities, permits of a review of the Commission's findings by the Supreme Court "in the same manner . . . . as other orders and

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[16] Cf. 3 California Law Review, 255, for comment looking toward an interpretation differing from that reached in the principal case.

[1] (Jan. 17, 1916), 51 Cal. Dec. 60, 154 Pac. 864.

[2] Instituted under the provisions of § 47 of the Public Utilities Act as amended (Cal. Stats. 1913, p. 684). The state constitution was amended by the adoption, on Nov. 3, 1914, of § 23a of article XII, which declared that the railroad commission should have such power to fix the just compensation to be paid for the property when it is sought to be acquired by a municipal corporation or public utility district as the legislature shall confer upon it and that "all acts of the legislature heretofore adopted which are in accordance herewith, are hereby confirmed and declared valid." The California Supreme Court holds that this removes all doubt of the present validity of the amendment to § 47. The proceedings in this case were begun prior to the adoption of the constitutional amendment but any objections that might have been made upon this ground were deemed to have been waived by the water company.

[3] In the matter of the application of Marin Municipal Water District for an order etc. (Apr. 9, 1915), 6 C. R. C. 507.

decisions of the Commission." Section 67 of the Act, defining the scope of the review, says that it "shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California." It is further provided that the "findings and conclusions of the Commission on questions of fact shall be final", and that "such questions of fact shall include ultimate facts." In the first case arising under the Public Utilities Act,[4] the Supreme Court was equally divided as to the effect of this section upon the scope of the writ of review. Mr. Justice Henshaw (Justices Lorigan and Melvin concurring) reached the conclusion that, in violation of all precedent and decision, the purview of the writ of review had been enlarged; Mr. Justice Sloss (with whom concurred Justices Shaw and Angellotti) was of opinion that the office of the writ was unaltered. Upon principle the position of the former would seem to be unassailable. The issue remains undetermined by the decision in the instant case.

The writ of review affords the sole means of challenging decisions of the Railroad Commission, at least through resort to the judicial authority of the State. If the scope of the inquiry allowed to the court by virtue of this procedure is to be at all adequate—if, indeed, it is to satisfy the plainest requirements of due process—the office of the writ must be enlarged beyond its initial constitutional and statutory scope. The writ issues normally from a superior tribunal to an inferior tribunal or officer for the purpose of correcting an excess of jurisdiction.[5] An administrative order reducing rates to a confiscatory level would offend due process, but could not be challenged upon jurisdictional grounds.[6] It is clear, therefore, that if constitutional rights are to be enforced in the State courts, the inquiry upon certiorari in cases arising before the Railroad Commission must go beyond jurisdiction merely, and such is apparently the legislative intent.

The review of orders of the Interstate Commerce Commission by the federal courts may appropriately be assimilated to the exercise of correlative functions by state courts respecting decisions of Public Service Commissions. It is now well settled[7] that the United States courts may not prevent the enforcement of

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[4] Pacific Tel. & Tel. Co. v. Eshleman (1913), 166 Cal. 640, pp. 651, 692, 137 Pac. 1119.

[5] Cal. Const., art VI, § 4; Cal. Code Civ. Proc., § 1068; Quinchard v. Board of Trustees (1896), 113 Cal. 664, 45 Pac. 856; Cook v. Civil Service Com'n (1911), 160 Cal. 589, 117 Pac. 663.

[6] Spring Valley Water Works v. Bryant (1877), 52 Cal. 132, at p. 138.

[7] Interstate Com. Com'n v. Union Pac. R. R. (1912), 222 U. S. 541, 56 L. Ed. 308, 32 Sup. Ct. Rep. 108; Interstate Com Com'n v. A. T. & F. Ry. Co. (1914), 234 U. S. 294, 58 L. Ed. 1319, 34 Sup. Ct. Rep. 814.

the Commission's orders except when they (1) violate constitutional safeguards, (2) exceed the power conferred by the statute, or (3) proceed upon a mistake of law. The purpose of the federal regulative scheme is one with that of the state; the legislative intent in each instance is to secure the supremacy of the administrative tribunal within the field committed to it, and yet to preserve from invasion the constitutional and statutory rights of the parties litigant. The federal courts are not embarrassed by a statute possessing such distinctive attributes as the California Public Utilities Act, but the reviewing power committed to the judiciary under the Act to Regulate Commerce hardly transcends the barest necessities. We may reasonably anticipate that the measure of review here reposed in the federal courts will substantially determine the limits of inquiry upon certiorari under the California practice. The decision in Del Mar Water Company v. Eshleman[8] looks in this direction, and the text of section 67 seemingly contemplates this result.

O. K. P.

TENDER: TENDER IN WRITING UNDER CODE PROVISIONS.—The California Code of Civil Procedure provides that one to whom a tender is made, must, "at the time, specify his objection or he must be deemed to have waived it,"[1] and that, "an offer in writing to pay a particular sum of money, or to deliver a written instrument, or specific personal property, is, if not accepted, equivalent to the actual production of the money, instrument or property."[2] Since a refusal to perform upon tender, if the latter is properly made, is a breach of contract for which an action lies,[3] and since, under the first section quoted above, objections not made at the time of the tender are waived, the effect of a written tender becomes a matter of importance.

At common law, actual production of the thing tendered was necessary,[4] whether it was money, chattels, or an instrument, unless the party to whom the tender was due, did something which dispensed with the formal tender.[5] The code has evidently changed the common law, but it is not immediately apparent, from the Code sections quoted, how far this change actually goes. Actual production, at least, is dispensed with in the situations

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[8] (1914), 167 Cal. 666, 140 Pac. 948.

[1] Cal. Code Civ. Proc., § 2076.
[2] Cal. Code Civ. Proc., § 2074.
[3] Ripley v. McClure (1894), 44 Exch. 344.
[4] Finch v. Brook (1834), 1 Bing. N. C. 253, 131 Eng. Rep. R. 1114; People v. Harris (1858), 9 Cal. 572, 573; Deering Harvesting Co. v. Hamilton (1900), 80 Minn. 162, 83 N. W. 44; Te Poel v. Shutt (1899), 57 Neb. 592, 78 N. W. 288.
[5] Such as refusal to perform, Sheplar v. Green (1893), 96 Cal. 218, 31 Pac. 42; repudiation, Scribner v. Schenkel (1900), 128 Cal. 250, 60 Pac. 860; prevention of tender, Hochster v. De la Tour (1853), 2 El. & Bl. 678, 118 Eng. Rep. R. 922.